**MAORI LAND TENURE**

Maori land may be held in completely different modes of tenure than the forms of tenure prevailing in respect to European land. In particular multiple ownership is widely recognised in Maori land.

Historically, traditional tenure saw all land held tribally, with no general right of private or individual ownership except the right of Maori to occupy, subject to the paramount right of the tribe. Hapu and Whanau groups were allocated the right to use predetermined areas of land according to the general needs of the individual group.

The principal of right of occupation and use was most important in traditional Maori Society. Occupation was often cited as a necessary means of maintaining ownership over land, but this could also be done by cultivating the land or by collecting food and other resources from it. Another means of establishing rights to land was ancestral right. Succession to customary land was based on being able to prove unbroken descent from an ancestor whose right was recognised, done through accurate recital of one’s Whakapapa or genealogy.

The mana of a tribe was associated with a clearly defined territory. Boundaries were marked by physical features such as mountains, rivers, lakes, outcrops of rocks, or specially erected markers.

It was on the marae that the tribe debated and discussed public policy, with all members of the tribe having an equal right to speak or be represented. It was through being a member of the tribe, and occupying the land that this right to speak was obtained. Any tribe that occupied a particular locality was the tangata whenua for that area.

Thus there grew up in early NZ (Aotearoa), a finely balanced system of land tenure, with individual rights of land use being given second place to the need for maintaining group unity and survival. All the tribal members lived on, worked and defended the land from which they derived their economic, social and political sustenance. In return they all had some say on the marae in how that land was used or disposed of. Land was the bread of life and an enduring symbol of where they stood in the world.

On 6th February 1840, at Waitangi in the Bay of Islands, a treaty was singed between Governor Hobson on behalf of Queen Victoria, and Maori chieftains on behalf of most iwi. In this treaty Maori ceded Governance (Kawanatanga) to Queen Victoria, but were guaranteed full authority, (te tino rangatirantaga), over their natural, physical, and metaphysical resources. These resources included where they lived, where they cultivated or gathered food, and where they buried their dead. (i.e. lands, fisheries and forests).

Thus while the Crown was to hold sovereign authority in NZ, tribal elders were to retain administrative authority over their own estates. It was agreed that the Crown should have exclusive right to extinguish Maori title by purchase whenever Maori agreed or wished it.

There is no doubt that there are ambiguities in the wording and content of the Treaty, and that over the 160 years since the signing of the Treaty the Treaty has been breached. Much of this wrong doing has been accepted by the NZ Government, and negotiations are taking place between Iwi and the Crown to address longstanding grievances.

In the 1980s, the Government set out the principles by which it will act when dealing with issues that arise from the Treaty of Waitangi (for example, when considering recommendations from the Waitangi Tribunal). These Crown principles are:

* *The Principle of Government (the Kawanatanga Principle):* The Government has the right to govern and make laws.
* *The Principle of Self-Management (the Rangatiratanga Principle):* The iwi has the right to organise as iwi, and, under the law, to control their resources as their own. Necessary elements of the Crown’s policy of recognising rangatiratanga are include restoration of iwi self management, and the active protection of taonga, both material and cultural.
* *The Principle of Equality:* All New Zealanders are equal before the law. Furthermore, there is an implicit assurance that social tights would be equally by Maori with all NZ citizens of whatever origin.
* *The Principle of Reasonable Co-operation:* Both the Government and iwi are obliged to accord to each other reasonable co-operation on major issues of common concern. The outcome of reasonable co-operation will be partnership.
* *The Principle of Redress:* The Government is responsible for providing effective processes for the resolution of grievances in the expectation that reconciliation can occur. This process may involve courts, the Waitangi Tribunal, or direct negotiation. Any redress provided must take account of its practical impact and of the need to avoid the creation of fresh injustice.

**The Waitangi Tribunal**, (established from the Treaty of Waitangi Act 1975), has power to make recommendations to government upon a wide range of claims. The Waitangi Tribunal provides assistance to Treaty partners within the terms of the Treaty of Waitangi Act 1975. It also assists other parties appearing before the Tribunal and agencies involved in servicing the resolution of Treaty grievances. The Waitangi Tribunal inquires into claims brought by Maori against the Crown on issues relating to the Treaty of Waitangi. It reports its findings to Government and sometimes recommends how issues could be resolved.

The Maori Land Court, (a feature of the Maori Land Act 1993), has the objective to promote and assist in the retention of Maori Land and in general land owned by Maori, and in the effective use and development of such land on behalf of the Maori owners.

The Maori Land Court has a wide jurisdiction including the hearing and determining of claims to the ownership over Maori land, determining the relative interests of the owners in common, determining whether or not any specified person is a Maori or descendant of a Maori, determining whether any land is Maori customary land Maori freehold land or general land owned by Maori or Crown.

**Under the Maori Land Act 1993**, all land in NZ is accorded one of the following statutes;

* *Maori Customary Land* – Land held be Maori in accordance with Maori customary values. (Tikanga).
* *Maori Freehold Land*- where the beneficial ownership of land has been determined by the Maori Land Court by freehold order. Land owned by Maori as a beneficial estate. This is the majority of the land in NZ (approximately 99%).
* *General Land Owned by Maori* – land other than Maori freehold land that has been alienated from the Crown for a subsisting estate in fee simple, while that estate is beneficially owned by more than 4 persons of whom a majority are Maori.
* *General Land* – land other than Maori freehold and general land owned by Maori, that has been alienated from the Crown for a subsisting estate in fee simple. (Privately owned Land and Farmland).
* *Crown Land Reserved for Maori* – land other than customary land, but is set aside or reserved for the use or benefit of Maori. (Crown owned).
* *Crown Land* – land other than customary land and Crown Land reserved for Maori, that has not been alienated from the Crown for a subsisting estate in fee simple.

Maori customary land may not be sold or disposed of by Will, and Maori freehold land may not be sold except in accordance with the Maori Land Act 1993. The Act also prohibits “options to purchase” being inserted in leases of Maori freehold land.

The Maori Land Act recognises the special significance Maori land has to Maori. Its objective is to promote the retention of Maori land in the hands of it’s owners, whanau and hapu and to ensure it is used in the best possible way.

Maori land is dealt with by the Maori Land Court. The court must always consult with and consider the wishes of the owners.

The function of the Maori Land Court is to contribute to:

* The administration of Maori land
* The preservation of taonga Maori
* The promotion of the management of Maori land by its owners, by maintaining the records of title and ownership information of Maori land
* Servicing the Maori Land Courts and related Tribunals
* Providing land information from the Maori Land Court and Crown Agencies. The principal matters in which the Maori Land Court has jurisdiction are:
* Appointment of trustees to carry out certain functions for the benefit of the beneficial owners
* Appointment of agents for various purposes
* The transfer (sale, lease etc) of Maori land. Otherwise known as alienation. The courts must agree to these transfers. An owner can only transfer his or her interest to a limited group known as the “preferred class of alienees”. These include children, grandchildren and whanaunga (blood relative) of the owner.
* Calling meetings of owners to consider alienation of use of Maori land
* Estate administration and succession. The Act has special provisions to make sure that in certain circumstances, shares follow the direct or blood line of the owner. This includes restricting the disposal of shares by will to a member of the “preferred class of alienees”.
* Appointment of agents
* Appointment of trusts
* Trusts. There are five types of trusts:
1. Ahu Whenua Trusts Land is held in the names of the trustees for owners. Trustees must follow the terms of the trust order and virtually all these orders provide for regular consultation with the owners. The land is not fractionated by death.
2. Putea Trusts, which are intended to deal with small impractical land interests. The assets and income are held for Maori community purposes and no further share successions are allowed. The beneficiaries are the shareholders and their descendants. These trusts are not very common.
3. Whanau Trusts, which can be set up in respect of any interest in land owned by Maori. The trust is in the name of a tipuna (ancestor) of the owners and the beneficiaries are the descendants of the tipuna.
4. Whenua Topu Trust, where all or most of the land is owned by the members of an iwi or hapu. The assets and the income are held for Maori community purposes for the members of that iwi or hapu. While no further share successions are allowed, the court can order that the income for specified share holdings be held for those owners who held those specified shares and their successors.
5. Kai Taiaki Trusts, where shares are held on trust for someone “under disability” (this includes people under the age of 20).

Trustees appointed to any of these trusts can be either “responsible trustees” (who look after the trust’s affairs and assets) or “advisory trustees” (who give advice to the responsible trustees). The responsible trustees are not bound to follow that advice.

The court will now review a trust regularly (at least every 20 years) and has the power to add to or reduce the number of trustees.

Maori incorporations remain in place as an important part in the management and development of Maori land in this increasingly commercial environment. They now have wider powers (not unlike a company) but are still subject to the supervision of the Maori Land Court. There are strict controls on the ability of an incorporation to sell land owned by it.

The Maori Land Court is also involved in such matters as status of Maori land; laying out roadways over Maori land and determining ownership. The Act also sets out statutory requirements for leases of Maori land.

In addition, the Maori Land Court may have special powers conferred on it by statute or by Order in Council.

The Maori Appellate Court is a court or record orginally constituted under the Maori Land Court Act 1894. It hears appeals from the Maori Land Court.

TOTAL MAORI LAND AREA, NUMBER OF MAORI LAND BLOCKS AND AVERAGE LAND AREA PER LAND BLOCKS BY MAORI LAND COURT DISTRICT – 2007

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | **Total Land Area per Maori Land District (ha)** | **Maori Land Area (ha)** | **% of Maori Land by Land District** | **Number of Land Blocks** | **Average Land Area per Land Block (ha)** |
| Tai Tokerau | 1,732,192 | 139,873 | 8.07% | 4,889 | 29 |
| Waikato-Maniapoto | 2,156,583 | 143,388 | 6.65% | 3,594 | 40 |
| Waiariki | 1,936,270 | 426,595 | 22.03% | 5,074 | 84 |
| Tairawhiti | 1,169,091 | 310,631 | 26.57% | 5,320 | 48 |
| Takitimu | 1,936,492 | 88,608 | 4.58% | 1,254 | 71 |
| Aotea | 1,284,284 | 334,207 | 26.02% | 3,710 | 90 |
| Te Wai Pounamu | 16,715,185 | 71,769 | .43% | 1,795 | 40 |
| TOTAL | **26,930,100** | **1,515,071** | **5.63%** | **25,636** | **59** |

It is important that we understand aspects of Maori Land Tenure, and the perspective of Land and Water that Maori hold dear. This understanding will enable the dairy industry and the farmers on the land to deal effectively with current issues that have arisen and that could have an effect on our business.

The Resource Management Act 1991 provides that the relationship of Maori and their culture and traditions with their ancestral lands, water, site, etc, is a matter of national importance which must be taken into account by all persons exercising functions under the Act.

The Treaty of Waitangi must be taken into account by all persons exercising functions under the RMA 1991.

When drawing up a Regional Plan, a regional council must, among other matters, have a regard to the conservation or management of fisheries or areas of food collection.

The main issues for farmers relating to Maori Land Tenure are those of:

### Environmental

As mentioned, under the RMA regional councils must recognise and provide for the relationship of Maori and their culture.

When planning to undertake an activity, local iwi may need to be consulted on the proposal. Natural areas of special interest to Maori include;

* Water quality and quantity – water is of utmost importance to Maori. The lives of Maori use intimately connected to the quantity and quality of fresh water that was available to them. These waters are still a traditional source of foods.
* The coastal environment – as a source of fish, seafood and other food sources.
* Sand and shingle in riverbeds. Protection of the “natural moods” of the river.
* Traditional ancestral sites, including burial grounds.
* Cultural resources. (Materials for weaving and carving).
* Maori land and Marae

In regard to the disposal of dairy effluent, land application is consistent with Maori views that effluent, however well treated, not be allowed into surface or ground water, but be returned to the land.

The Maori concept of the interconnectedness of land, water and people is very much consistent with the modern understanding of sustainability. Maori prefer a holistic and integrated approach to resource management because they understand and acknowledge that a river is not a collection of segments that can be managed as separate units, but needs to be managed as a whole, i.e. understanding the downstream effects of an action at a particular site.

It is recommended that landowners consult with local Maori on issues involving waterways and catchments, and encourage participation in the development of water management plans.

### Recreational

Recreational use of land and waterways is closely related to environmental issues. It is important to understand the sensitive nature of some aquatic habits and eco-systems to the invasive nature of some recreational activities. I.e. streambank and riverbed damage from water sports, or over fishing of some areas.

Other activities such as tramping, may require consultation with Maori groups so as not to interfere with traditional and ancestral sites.

**Land Issues**

Under law, privately owned freehold land cannot be the subject of Maori land claims. However, farmers need to be aware that there may be some areas on their land that have cultural significance to Maori. I.e. Pa sites, cemeteries, etc. It is important that farmers are sensitive to cultural values, and allow access to these areas. Communication and dialogue will ensure understanding of the needs and rights of all parties.

Many farmers would like to protect or enhance some areas on their land, whether for cultural reasons, aesthetic reasons, or other. Land protection agreements can be put into place in the form of a covenant, a management agreement or contract with the Department of Conservation, a Maori reservation, or a Protected Private Land agreement. These agreements have been covered in the “Physical Resources” module.

There are many farmers farming on Maori lease land, some short term and others long term leases. Tenants on Maori Land must recognise the needs of the owners in respect to access, and protection of significant sites or areas. Often in the case of Maori land, the lessee is dealing with multiple owners, some of which may have limited levels of farming knowledge, or who may have differing objectives in relation to the land. All this must be carefully considered in reaching a consensus, and ensuring a beneficial outcome for all parties involved.

As with any lease arrangements, continuity can often be in doubt. Again, by ensuring all parties are clear in their understanding of the lease agreement, any confusion or disagreement on conclusion of the lease will be avoided, i.e. values put on improvements.